

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
11 September 1947

UNITED STATES OF AMERICA VS MIKI TARODACHI
UNITED STATES OF AMERICA VS TAROKICHI NAKAYAMA

Review of the Staff Judge Advocate

1. The attached record of trial by common trial of Miki Tarodachi and Tarokichi Nakayama at Yokohama, Japan on 15 May 1947, by a Military Commission appointed by paragraph 1, Special Orders No. 112, Headquarters Eighth Army, United States Army, dated 14 May 1947, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Miki Tarodachi
AGE: Twenty-eight (28)
RESIDENCE: Not shown
MARITAL STATUS: Not shown
RELATIVES: Not shown
EDUCATION: Not shown
VOCATION: Not shown
MILITARY CAREER: Not shown
CLEMENCY RECOMMENDED BY COMMISSION: No

DATE OF CONFINEMENT: 18 December 1945
DATE OF ARRAIGNMENT: 15 May 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 15 May 1947
DATE OF SENTENCE: 15 May 1947
SENTENCE: OHL for one (1) year.

NAME: Tarokichi Nakayama
AGE: Not shown
RESIDENCE: Not shown
MARITAL STATUS: Married
RELATIVES: Wife, Father, three children.
EDUCATION: Not shown
VOCATION: Not shown
MILITARY CAREER: Not shown
CLEMENCY RECOMMENDED BY COMMISSION: No

DATE OF CONFINEMENT: 6 December 1945
DATE OF ARRAIGNMENT: 15 May 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 15 May 1947
DATE OF SENTENCE: 15 May 1947
SENTENCE: OHL for four (4) years.

2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentences:

<u>Charge and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
<u>TARODACHI</u>			
Charge: At the times and places set forth in the specifications, accused did violate the Laws and Customs of War.	G	G	Yes
Sp 1: In or about November 1943, accused with others, did willfully and unlawfully mistreat Lance Corporal Matsuaem J. Olason, a Canadian PW, by striking and beating him with fists and by otherwise abusing him.	G	G	Yes
Sp 2: On an occasion between 1 August 1943 and 31 March 1944, accused did willfully and unlawfully mistreat Private Leon J. Paget, a Canadian PW, by striking and beating him with a shoe and by kicking and otherwise abusing him.	G	G	Yes

Sp 3: Between 1 February 1942 and 20 August 1944, accused did willfully and unlawfully misappropriate and convert to his own use Red Cross supplies, furnished and intended for Allied PW's.

Withdrawn
(R. 2)

Sp 4: Between 1 February 1942 and 20 August 1944, accused did willfully and unlawfully mistreat numerous American, British and Canadian PW's, by striking, beating and kicking them, by compelling sick Prisoners to work when physically unfit to perform such labor and by otherwise abusing them.

G

G

Yes

NAKAYAMA

Charge: At the times and places set forth in the specifications, accused did violate the Laws and Customs of War.

G

G

Yes

Sp 1: In or about November 1943, accused did, with others, willfully and unlawfully mistreat Lance Corporal Matusalem J. Olason, a Canadian PW, by beating him with fists and by otherwise abusing him.

G

G

Yes

Sp 2: Between 20 August 1943 and 15 October 1944, accused did willfully and unlawfully mistreat Lance Corporal William A. Shayler, a Canadian PW, who was then ill, by beating him with a rubber shoe and by otherwise abusing him.

G

G

Yes

Sp 3: Between 20 August 1943 and 15 October 1944, accused did willfully and unlawfully mistreat Sergeant Earl W. Dickie, a Canadian PW, who was then ill, by beating him with fists.

G

G

Yes,

Sp 4: On an occasion between 20 August 1943 and 15 October 1944, accused did willfully and unlawfully mistreat Corporal Ernest G. McFarland, a Canadian PW, who was then ill, by beating him with fists.

G

G

No

Sp 5: Between 20 August 1943 and 15 October 1944, accused did willfully and unlawfully mistreat and abuse one Corporal Wilson, a British PW, by beating him.

G

G

Yes

Sp 6: Between 20 August 1943 and 15 October 1944, accused did willfully and unlawfully mistreat Sergeant Howard G. Donnelly, a Canadian PW, who was then ill, by beating him with fists and by otherwise abusing him.

G

G

Yes

Sp 7: Between 20 August 1943 and 15 October 1944, accused did willfully and unlawfully mistreat one Corporal Palmer, a British PW, who was then ill, by beating, kicking, and otherwise abusing him.

G

G

Yes

Sp 8: Between 20 August 1943 and 15 October 1944, accused did willfully and unlawfully misappropriate and convert to his own use Red Cross supplies furnished and intended for Allied PW's.

Withdrawn
(R. 2)

Sp 9: Between 20 August 1943 and 15 October 1944, accused did willfully and unlawfully mistreat and abuse numerous American, British, and Canadian PW's, by failing, neglecting and refusing to give them necessary and available medicine and medical attention, by burning them, and by forcing them to work when they were physically unfit to do so.

G

G

Yes

Sp 10: Between 20 August 1943 and 15 October 1944, accused did willfully and unlawfully mistreat numerous American, British and Canadian PW's by beating, kicking, and otherwise abusing them.

G

G

Yes

3. Summary of Evidence:

a. For the Prosecution:

TARODACHI

Specification 3 was withdrawn and Specification 4 was amended to omit the phrase "by compelling sick prisoners to work when physically unfit to perform such labor" (R. 2). As thus amended, accused pleaded guilty to the Charge and Specifications 1, 2 and 4 (R. 4).

In corroboration of the above plea the following was introduced into evidence:

As to Specification 1: In November 1943, the Japanese officials at the Prisoner of War Camp in Oiyama, Japan, made the discovery that some of the prisoners had torn their blankets. At a muster, all who had torn their blankets were ordered to step forward. Prisoner Olason had been issued torn blankets and did not advance with the others. When Olason's name was called he then stepped forward to join the group who had torn their blankets. As he walked over toward that group accused Tarodachi, accused Nakayama and two other guards struck him heavy blows on his head with their hands and fists. He was rendered dizzy but was not knocked down. Olason and the group were forced to stand at attention for about three hours. He was not hospitalized and did not suffer any serious injury from such treatment (Exs. 1, 2).

As to Specification 2: Prisoner Pageot was beaten with a shoe over the head by accused about a dozen times and was kicked in the stomach and shins. Following this he threw the boot at his testicles. This beating lasted about twenty minutes, after which he required hospitalization (Ex. 5).

As to Specification 4: The affidavits state that accused slapped prisoners on the slightest provocation, beat them with clenched fists sometimes quite severely, indulged in the kicking of shins and mass slappings and, on one occasion, forced prisoners to hold a boot in each hand at arm's length for about two hours (Exs. 1, 2, 20, 21, 38-44, 47).

NAKAYAMA

Specification 8 was withdrawn and Specification 9 was amended to omit the words: "by failing, neglecting and refusing to give them necessary and available medicine and medical attention". As thus amended, accused pleaded guilty to the Charge and remaining three specifications (R. 2, 3).

In corroboration of the above plea the following was introduced into evidence:

As to Specification 1: (Same as Tarodachi, Specification 1)

As to Specification 2: In February, 1945, accused struck prisoner Shaylor about the head with a rubber shoe about twelve times. Shaler was in a weakened condition at the time and was in "rest". As a result of this treatment he had to be helped to his mat (Ex. 3).

As to Specification 3: Prisoner Dickie was sent to the "rest han" and in the spring of 1945 was recovering from pneumonia and beriberi of the legs and feet. Accused hit him, (along with other patients), in the face as he was leaving the han to go outside in the sun (Ex. 4).

As to Specification 4: (No corroborative evidence introduced)

As to Specification 5: Prisoner Wilson was beaten by accused for about 15 minutes with his fists. He then took Wilson into the office and affiant "heard" that he received "more of a beating there" (Ex. 5).

As to Specification 6: Prisoner Donnelly states in his affidavit that one morning in December, 1944, he reported sick with diarrhea to accused. He asked Donnelly how many bowel movements he had had during the night. When he replied that he had had 18, accused called him a liar and struck him in the face with his closed fist three times. He was then forced to stand at attention in front of the office for two hours (Ex. 6).

As to Specification 7: The affidavit in support of this specification states that "Palmer was viciously struck many times for being rested from work by Lieutenant Stenning R. A. N. He had his rations stopped. Later that day he was brutally beaten & kicked. During the whole of this time Palmer was passing excreta". Accused is named as the perpetrator (Ex. 45).

As to Specification 8: Accused continually ordered men to work contrary to the prisoner doctor's orders, at a time when they were hardly able to walk and needed rest. He also slapped sick prisoners. It was agreed between prosecution and defense that orders from the commanding officer Osaka Prisoner of War Area were received by accused, that only a certain percentage of sick prisoners could be excused from work. Furthermore, it was agreed that the moxabustion treatment used by accused on the prisoners was one of the Japanese remedies and treatment for diarrhea and dysentery (R. 3, Exs. 4, 6, 14, 17-20, 22, 45).

As to Specification 10: The affidavits under this specification describe incidents where accused beat prisoners on numerous occasions. He forced one prisoner to stand at attention for an hour in snow up to his knees in a snowstorm and this reduced him to a "crying, shivering mass". He beat prisoners on the slightest provocation (Exs. 2, 8, 11, 12-14, 17-19, 21, 23-34).

b. For the Defense:

Accused Nakayama testified that he had beaten prisoners with his open hand. This was prompted because they would try to feign illness, no matter how well he treated them. This caused him to become angry and he hit them. When he sent prisoners to work, as charged in Specification 9, it was under orders of his superiors. He only sent slightly ill prisoners to work. He was trained in the army to hit others and when he hit prisoners he did so without any intention of mistreating them (12).

Accused Tarodachi testified that when the prisoners disobeyed his warnings after he had cautioned them a number of times he succumbed to his feelings and hit them. After thinking it over he felt that if he had spoken to them instead it would have been better. When he was a soldier he was struck by his superiors (R. 13).

4. Opinion:

The record is legally sufficient to support the findings of the commission with the exception of Specification 4 against accused Nakayama. It is believed that even under a plea of guilty it should be corroborated in some manner. The commission was constituted by proper authority and had jurisdiction of the accused and the offenses alleged.

The prosecution introduced evidence by means of affidavits of former prisoners who had been interned in the camp and were in a position to know the facts of the situation. From such, and their pleas of guilty, the guilt of the accused was firmly established (Except Nakayama Specification 4).

The complete record discloses that accused had a fair trial and that they were ably represented by competent counsel. They took the stand and testified in their own behalf. A careful scrutiny of the entire record fails to disclose any error which injuriously affected the substantial rights of accused or any failure to accord them a fair trial in every respect. The evidence supports the findings, except as hereinabove mentioned. There is no evidence that accused were not sane at the time the alleged acts were committed and at the time of trial.

5. Recommendations:

There are no letters of clemency from any member of the commission. The letters of clemency on behalf of accused Nakayama have been read and considered. The commission sentenced accused Nakayama to four (4) years confinement at hard labor, and accused Tarodachi to confinement at hard labor for one (1) year. The sentences are legal.

It is recommended that the finding of the commission as to Specification 4 against accused Nakayama be disapproved. However, because the sentence is not excessive for the Charge and the remainder of the specifications of which he was found guilty, it is recommended that the sentence be approved. It is recommended that the sentence of accused Tarodachi be approved. Accused Nakayama was confined 6 December 1945, went to trial and was sentenced 15 May 1947. Due to the length of time accused Nakayama spent in confinement prior to the date of sentence it is recommended that fourteen (14) months of his confinement imposed at hard labor be remitted. Accused Tarodachi was confined 18 December 1945, went to trial and was sentenced 15 May 1947. Due to the length of time accused Tarodachi spent in confinement prior to sentence it is recommended that the unserved portion of his sentence be remitted.

6. Action:

Forms of action designed to carry these recommendations into effect are attached hereto.

PAUL B. SPURLOCK
Reviewer
Judge Advocate Section

I CONCUR:

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 848

Yokohama, Japan
20 September 1947

In the foregoing case of Miki Tarodachi, the sentence is approved, but owing to the length of time the accused has been in confinement prior to sentence, the unserved portion of the confinement at hard labor imposed is remitted. As thus modified the sentence will be duly executed.

/s/ Chas. W. Ryder
t/ CHAS. W. RYDER
Major General, U. S. Army
Commanding

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Commanding General
APO 843

Yokohama, Japan
20 September 1947

In the foregoing case of Taroichi Nakayama, the finding of guilty of Specification 4 of the Charge is disapproved. The sentence is approved and will be duly executed but owing to the length of time accused has been confined prior to sentence, fourteen (14) months of the confinement at hard labor are remitted. As thus modified the sentence will be duly executed. Sugame Prison, Tokyo, Honshu, Japan, or elsewhere as the Supreme Commander for the Allied Powers or other proper authority may direct, is designated as the place of confinement.

/s/ Chas. W. Ryder
/t/ CHAS. W. RYDER
Major General, U. S. Army
Commanding